

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INQUIRY INTO THE STATE)	CASE NO.
UNIVERSAL SERVICE FUND)	2016-00059

ORDER

This matter is before the Commission upon a motion filed by SI Wireless, LLC dba MobileNation ("SI Wireless") requesting a rehearing of the Commission's February 2, 2017 Order ("February 2, 2017 Order") that denied SI Wireless's request for confidential treatment for certain materials contained in its response to Commission Staff's First Request for Information ("Staff's First Request"), Item 1, Exhibit 1. The Commission denied confidential treatment for the total number of access lines SI Wireless had in service in Kentucky and the amount of surcharge remitted to the Kentucky Universal Service Fund, which is contained on Lines 1 and 3, respectively, on the Commonwealth of Kentucky Universal Service Fund forms ("KUSF Forms") submitted monthly by SI Wireless for January 2014 through July 2016. The Commission found that SI Wireless had not established that disclosure of the designated materials could result in an unfair competitive advantage to its customers because the information is publicly available from other sources, including SI Wireless's report of gross earnings from intrastate business filed with the Commission pursuant to KRS 278.140. Additionally, the Commission noted that SI Wireless had filed its gross earnings report since 2011 without previously requesting confidential treatment for this information.

In support of its motion, SI Wireless argues that access line counts are presumptively confidential whether or not a wireless provider has requested confidential treatment for the information. As a basis for this assertion, SI Wireless cites to Case No. 2007-00464,¹ in which the Commission determined that access line counts submitted by all wireless providers would automatically be given confidential treatment, whether or not the wireless provider filed a motion for confidential treatment. SI Wireless further argues that the Commercial Mobile Radio Service ("CMRS") market is highly competitive and that denial of its motion provides a commercial advantage to its competitors who would receive business intelligence regarding SI Wireless without expending resources. Lastly, SI Wireless argues that keeping information regarding non-Lifeline access line counts confidential does not affect the Commission's ability to address the issues in this matter.

Having reviewed the motion and being otherwise sufficiently advised, the Commission finds that SI Wireless has established good cause to grant a rehearing in this matter and to amend the February 2, 2017 Order. The Commission further finds that SI Wireless's response to Staff's First Request, Item 1, Exhibit 1, should be granted confidential treatment for an indefinite period of time.

In Case No. 2007-00464, the Commission determined that public disclosure of access line counts for wireless providers reported on monthly Telecommunications Relay Service fund ("TRS") and the Telecommunications Access Program fund ("TAP") reports would violate and undermine KRS 65.7639, which grants confidential protection to this information in conjunction with the requirement that CMRS providers file this

¹ Case No. 2007-00464, *Petition of the Kentucky Commission on the Deaf and Hard of Hearing to Expand the Funding Base for the Kentucky Telecommunications Access Program* (Ky. PSC Apr. 16, 2009) at ordering paragraph 1.

information with the CMRS Emergency Telecommunications Board.² Because the legislative intent of KRS 65.7639 was to keep access line counts confidential, the Commission found that wireless providers were not required to file motions for confidentiality for access line counts and that monthly TRS/TAP reports should be automatically granted confidential protection when filed with the Commission. The Commission finds that the reasoning that applied in Case No. 2007-00464 also applies to the facts of this motion. Further, the gross operating reports filed by SI Wireless pursuant to KRS 278.140 contain different and less granular information than the information in the KUSF Forms.

IT IS THEREFORE ORDERED that:

1. SI Wireless's motion for rehearing of the Commission's February 2, 2017 Order is granted.
2. The Commission's February 2, 2017 Order is amended to provide that the materials set forth in SI Wireless's response to Staff's First Request, Item 1, Exhibit 1, shall not be placed in the public record or made available for public inspection for an indefinite period of time, or until further Orders of this Commission.
3. Use of the materials in question in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).
4. SI Wireless shall inform the Commission if the materials in question become publicly available or no longer qualify for confidential treatment.
5. If a non-party to this proceeding requests to inspect materials granted confidential treatment by this Order and the period during which the materials have been granted confidential treatment has not run, then SI Wireless shall have 20 days

² *Id.* at page 3.

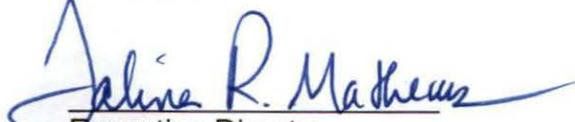
from receipt of written notice of the request to demonstrate that the materials still fall within the exclusions from disclosure requirements established in KRS 61.878. If SI Wireless is unable to make such demonstration, the requested materials shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

6. The Commission shall not make the requested materials available for inspection for 20 days following an Order finding that the materials no longer qualify for confidential treatment in order to allow SI Wireless to seek a remedy afforded by law.

By the Commission

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